

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

SARAH E. DAY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. 1:21-cv-179
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

**COMPLAINT FOR DAMAGES**

Plaintiff, Sarah E. Day, by her undersigned attorneys of record, alleges and states as follows:

**STATEMENT OF CLAIMS**

1. Plaintiff, pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, seeks compensatory damages arising from Defendant's negligence in failing to adhere to the prevailing professional standard of care which is generally recognized as acceptable and appropriate by reasonably prudent similar health care providers.

**JURISDICTION**

2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1346(b) in that this is a claim against the United States of America, for money damages, accruing on or after January 1, 1945, for personal injury caused by the negligent and wrongful acts and omissions of employees of the Government while acting within the course and scope of their office or employment, under the circumstances where the Defendant, if a private person, would be liable to the Plaintiff.

3. Jurisdiction founded upon the federal law is proper in that this action is

premised upon federal causes of action under the Federal Tort Claims Act (hereinafter “FTCA”), 28 U.S.C. § 2671, *et. seq.*

4. Pursuant to the FTCA, 28 U.S.C. § 2671, *et. seq.*, the Plaintiff on or about March 9, 2020, presented her claim to the appropriate federal agency for administrative settlement under the FTCA requesting \$40,000.00. Although Plaintiff’s counsel has made multiple attempts to contact counsel for the Department of Health and Human Services in attempt to settle this matter, numerous emails have gone unanswered. Since Plaintiff has not received a final disposition and it has been more than six months since filing her claim, this lawsuit is timely filed pursuant to 28 U.S.C. § 2675(a).

5. This action is timely pursuant to 28 U.S.C. § 2401(b) in that it was presented to the appropriate federal agency within two years of accrual and this action was filed more than six months after not receiving a final disposition.

#### **VENUE**

6. The Plaintiff, Sarah E. Day, resides in Indianapolis, Indiana and venue is proper in this judicial district pursuant to 28 U.S.C. § 1402(b).

#### **PARTIES**

7. On January 21, 2019 and thereafter, Plaintiff was under the care and treatment of Jana L. Seitz, M.D. a physician practicing Obstetrics and Gynecology at HealthNet Barrington Health & Dental Center located at 3401 E. Raymond Street, Indianapolis, Indiana.

8. HealthNet, Inc. is a domestic nonprofit corporation registered to do business in the State of Indiana and operates HealthNet Barrington Health & Dental Center. As stated on HealthNet, Inc.’s website, “This health center receives HHS funding and has

Federal Public Health Service deemed status with respect to certain health or health-related claims, including medical malpractice claims for itself and its covered individuals.”

9. On January 21, 2019, Jana L. Seitz, M.D. was a duly authorized agent and employee of HealthNet, Inc. d/b/a HealthNet Barrington Health & Dental Center and was acting within the scope of her employment and agency in her treatment of Plaintiff.

### **FACTS**

10. On January 21, 2019, Plaintiff was scheduled for a vaginal cuff pap smear and vulvar colposcopy which was performed by Dr. Seitz at HealthNet Barrington Health & Dental Center.

11. During the procedure, Dr. Seitz was not able to perform the vulvar colposcopy “due to the application of TCA and superficial burn of tissue.”

12. Dr. Seitz’s procedure notes state the following:

#### **Colposcopy:**

Indication. Hx VIN3 s/p excision, most recent hx VIN1. Performed by jseitz, md. Contraception s/p hysterectomy. Time-Out Procedure Informed Consent Obtained:, Yes, Patient Name and DOB Verified:, Yes, STOP: Correct Procedure:, Yes, Correct Site:, Yes, Witnessed By:, Seitz, Jana L on 01/21/2019 12:09:07 PM EST>. Procedure pap smear done. Colposcopy **colposcopy not performed due to accidental TCA applied instead of acetic acid. Immediately applied damp baking soda when realized mistake. Generalized bright whitening of area applied.**

Emphasis added.

13. Under “Examination” Dr. Seitz dictated the following:

#### **GYN:**

**EXTERNAL GENITALIA:** no obvious lesions prior to application of solution, after application had bright whitening on vulva from 3 oclock down around upper

perineum to 9 oclock on vulva extending ~1.5cm from introitus.

14. As a result of the TCA that was applied by Dr. Seitz to Plaintiff's vulva, she suffered two different burned areas and was diagnosed with partial thickness burn of the vulva.

15. Dr. Setiz fell below the standard of care by utilizing TCA instead of acetic acid and not verifying the solution prior to placing it on Plaintiff's vulva.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, Sarah E. Day, demands judgment against the Defendant, United States of America, as follows:

- a. Enter judgment on behalf of Plaintiff against Defendant for reasonable actual damages sufficient to compensate her;
- b. Cost of suit;
- c. Post-judgment interest; and,
- d. Grant all other and additional relief to which Plaintiff may be entitled.

Respectfully submitted:

RILEYCATE, LLC

/s/ Russell B. Cate

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